Supreme Court, U.S.
FILED

981758 MAY 3 1999

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

PARKWOOD DEVELOPMENTAL CENTER, INC. and TEMPLETON SCHOOL OF SPECIAL EDUCATION, INC.,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD and UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 1996,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

CLIFFORD H. NELSON, JR.
Counsel of Record
FRANCINE N. SILVERSTEIN
WIMBERLY, LAWSON, STECKEL, NELSON & SCHNEIDER, P.C.
Attorneys for Petitioners
Suite 400, Lenox Towers
3400 Peachtree Road, N.E.
Atlanta, Georgia 30326
(404) 365-0900

152752

Counsel Press LLC
FORMERLY LUTZ APPELLATE SERVICES
(800) 274-3321 • (800) 359-6859

32 pp

QUESTION PRESENTED

Whether the Eleventh Circuit Court of Appeals improperly enforced an Order of the National Labor Relations Board (the "NLRB" or the "Board"), which improperly certified the results of a representation election by finding the Union's offer to waive initiation fees proper, even though the Union's offer to waive initiation fees was admittedly not made in accordance with the requirements set forth in *NLRB v. Savair Mfg. Co.*, 414 U.S. 270, 94 S. Ct. 495 (1973).

STATEMENT PURSUANT TO RULE 29.6

Neil L. Pruitt Corporation and United Health Services, Inc. are the parent companies of Parkwood Developmental Center, Inc. and Templeton School of Special Education, Inc.

The Petitioners have no subsidiary companies.

TABLE OF CONTENTS

	Page
Question Presented	i
Statement Pursuant to Rule 29.6	ii
Table of Contents	iii
Table of Cited Authorities	iv
Table of Appendices	v
Opinions Below	1
Statement of Jurisdiction	1
Statement of the Case	2
A. Course of Proceedings	2
B. Statement of Facts	4
C. Basis for Federal Jurisdiction in the Court of First Instance	6
Reason for Granting the Writ	7
Conclusion	11

TABLE OF CITED AUTHORITIES

Page

Cases:

Bonner v. City of Prichard, 661 F.2d 1206 (11th Cir. 1981) 8

Days Inns, 216 NLRB 384 (1975) 10

Kent Field Medical Hospital, 219 NLRB 174 (1975) 10

NLRB v. Savair Mfg. Co., 414 U.S. 270, 94 S. Ct. 495 (1973) ..... i, 6, 7, 8, 9, 10

NLRB v. VSA, Inc., 24 F.3d 588 (4th Cir. 1994) ... 8

NLRB v. WFMT, 997 F.2d 269 (7th Cir. 1993) 8, 9

Vicksburg Hospital, Inc. v. NLRB, 653 F.2d 1070 (5th Cir. 1981) 7, 8

Statutes:

28 U.S.C. § 1254(1) 1

29 U.S.C.A. § 160(e) 7

TABLE OF APPENDICES

Page

Appendix A — Opinion Of The United States Court Of Appeals For The Eleventh Circuit Dated And Filed December 1, 1998 ..... 1a

Appendix B — Decision And Order Of The National Labor Relations Board Dated And Filed March 30, 1998 ..... 4a

Appendix C — Order Of The United States Court Of Appeals For The Eleventh Circuit Denying Petition For Rehearing Dated And Filed February 4, 1999 ..... 14a

OPINIONS BELOW

The unreported opinion of the United States Court of Appeals for the Eleventh Circuit in *National Labor Relations Board v. Parkwood Developmental Center, Inc., and Templeton School of Special Education, Inc.*, Case No. 98-8627 (11th Cir. 1998) is set forth in Appendix A at 1a.

The opinion in *Parkwood Developmental Center, Inc., and Templeton School of Special Education, Inc., as joint employers and United Food and Commercial Workers Union, Local 1996, AFL-CIO, CLC*, is reported at 325 NLRB No. 89 (1998) and is set forth in Appendix B at 4a.

STATEMENT OF JURISDICTION

The judgment sought to be reviewed was entered by the United States Court of Appeals for the Eleventh Circuit on December 1, 1998.

The United States Court of Appeals for the Eleventh Circuit denied Petitioners' Petition for Rehearing and Petition for Rehearing En Banc on February 4, 1999.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

A. Course of Proceedings

Parkwood Developmental Center, Inc., a Georgia Corporation, and Templeton School of Special Education, Inc., a Georgia Corporation (hereinafter collectively referred to as "Parkwood" or "Petitioners"), are joint employers with offices and a place of business located at 1501 Lee Street, Valdosta, Georgia 31602. Parkwood Developmental Center, Inc. and Templeton School of Special Education, Inc. are jointly engaged in business as an intermediate care facility for the mentally retarded and a special education school.

The United Food and Commercial Workers Union, AFL-CIO, CLC Local Union 1996 (hereinafter referred to as the "Union" or "UFCW") filed a Petition for Certification of Representative on January 31, 1997, to become the bargaining representative for the employees at Parkwood's Valdosta facility. The parties entered into a Stipulated Election Agreement, approved by the Regional Director of Region 12 of the NLRB on February 25, 1997, pursuant to which an election was held on April 10, 1997.[1] At the conclusion of the election, the Tally of Ballots reflected that a majority of the employees eligible to vote cast ballots in favor of representation by the Union.

Parkwood filed objections to the election on April 16, 1997, based upon both the conduct of the election and

---

1. The parties agreed in the Stipulated Election Agreement that the appropriate collective bargaining unit would consist of approximately 173 employees, and include housekeepers, laundry employees, nursing professionals, and others. (R5-530-531).

conduct affecting the election. The objections focused on several concerns, including perceptions of impropriety concerning the sanctity of the ballot box and Union offers to waive initiation fees which were made to only a portion of the employees eligible to vote in the election. Upon investigation of Parkwood's Objections, the Board directed, by Order dated May 2, 1997, that a hearing beginning on May 15, 1997 be held to resolve the issues raised by Parkwood's Election Objections. After that hearing, the Hearing Officer issued, on September 2, 1997, her Report and Recommendations on Objections (the "Report"), and concluded that Parkwood's objections raised no material or substantial issues affecting the results or conduct of the election.

Parkwood excepted to several of the Hearing Officer's findings of fact and conclusions of law, including her finding that certain gift certificates provided to some employees by the Union, which entitled the holders thereof to a waiver of initiation fees and assessments, were not unlawful financial inducements to vote for the Union.[2]

---

2. Parkwood also excepted to the Hearing Officer's findings and conclusion that the Board agent's conduct in failing to properly seal the ballot box and the resulting condition of the ballot box after the break between voting sessions — which consisted of a loosening of the tape, a 1/4 inch gap along the bottom edge of the box, and a folded ballot sticking out of the bottom edge, were not significant enough to cast a doubt or cloud over the integrity of the ballot box such that the election should be overturned. Parkwood also initially excepted to the Hearing Officer's conclusion that the Union's material misrepresentations of fact, regarding contract ratification, strike authorization, and other internal union procedures, did not affect the employees' right to a free and fair choice, but withdrew this issue from consideration by the Eleventh Circuit Court of Appeals. Neither of these issues are currently before this Court for review.

Notwithstanding Parkwood's exceptions, on November 7, 1997, the NLRB summarily adopted the Hearing Officer's findings without any analysis whatsoever.

In order to test the validity of the Board's rulings on its election objections, Parkwood refused to bargain with the Union, following its certification as collective bargaining representative. Through the application of summary judgment in the unfair labor practice proceedings, the Board ordered Parkwood to bargain with the Union. Upon Parkwood's refusal to bargain, the Board petitioned the Eleventh Circuit Court of Appeals to enforce its Order. The Eleventh Circuit granted the Board's petition and enforced the Board's Order. By enforcing the Board's Order in this case, the Eleventh Circuit Court of Appeals failed to follow the law of the United States Supreme Court. Therefore, Parkwood now requests that this Court grant its petition for writ of certiorari, and review the decision of the Eleventh Circuit.

B. Statement of Facts

During the last stage of the election campaign, the Union distributed a certificate or voucher to some employees who were eligible to vote in the election. These certificates or vouchers provided that the *holder* thereof would be exempt from having "to pay initiation fees of any kind, nor any fees other than the regular monthly dues." (R4-Emp. Ex. 2).[3]

All employees eligible to vote did not receive the certificates. (R3-225, 227, 281, 282). Since the Union chose

3. All record cites in this petition reference the record in the Eleventh Circuit Court of Appeals.

to mail the certificates, some employees had moved or for other reasons did not receive a personal certificate. (R3-282, 283). These certificates were not distributed in any other manner. The Union did not make a unit wide offer to waive initiation fees by distributing a handbill which did not limit the fee waiver solely to holders of the certificates. Nor did the Union verbally make a unit wide offer to waive initiation fees at a meeting held by the Union. Though both of these methods would have ensured that the Union's offer to waive initiation fees was universally extended to *all* employees, the Union chose not communicate its waiver offer in such a manner during the campaign. Therefore, only those employees who actually received a certificate and subsequently presented it to the Union would be eligible for the waiver. (R4-Emp. Ex. 2).

The certificate specifically stated that "it will be recognized as valid only if presented to the union not later than thirty (30) days after the union agreement is in effect with present employer." (R4-Emp. Ex. 2). Thus, the Union exhorted to those who received the certificate: "This certificate is valuable to you, DON'T LOSE IT!" (R4-Emp. Ex. 2). According to the eligibility requirements stated on the certificates themselves, having possession of a certificate and presenting it to the Union were prerequisites for the waiver of the Union's initiation fees. Those employees who did not receive a certificate in the mail were simply out of luck — they would have nothing to present — no coupon entitles them to no waiver of hundreds of dollars of union related charges.

Following the election in this case, Parkwood objected to the Union's use of the certificates and their partial distribution to employees. Parkwood complained that the

certificates described above were unlawful financial inducements that interfered with employees' free and fair choice in the election. Parkwood further contended that the certificates were not proper offers to waive initiation fees because the Union violated the requirements of *Savair*[4] that outline the circumstances under which an offer to waive initiation fees may be valid.

Notwithstanding Parkwood's objections, the Board decided that the certificates were not unlawful financial inducements, even though they admittedly were not issued in accordance with the requirements of *Savair*. Upon review by the Eleventh Circuit Court of Appeals, through the Board's Application for Enforcement of its Order, the Court failed to enforce the requirements for initiation fee waivers set forth by the Supreme Court in *Savair*. As a result, the Eleventh Circuit's decision in this case directly contradicts the Supreme Court's decision in *Savair*. Therefore, Petitioners respectfully request that this Court grant its petition for writ of certiorari and review the decision of the Eleventh Circuit Court of Appeals in this case.

C. Basis for Federal Jurisdiction in the Court of First Instance

This case came before the Eleventh Circuit Court of Appeals pursuant to an Application for Enforcement filed by the NLRB. The representation case at issue in this proceeding could not have been brought before the Eleventh Circuit directly for review. Only when an employer refuses to recognize the certification of a collective bargaining representative and is found to have committed an unfair

---

4. *NLRB v. Savair Mfg. Co.*, 414 U.S. 270, 94 S. Ct. 495 (1973).

labor practice for its subsequent refusal to bargain, can the issues surrounding the election be scrutinized by an appellate court. Once the Board has made a determination that an employer has refused to bargain with the certified bargaining representative, the representation case and unfair labor practice case can then be treated as a singular entity and the complete record is fully reviewable. 29 U.S.C.A. § 160(e). These procedures were followed in the case *sub judice* so as to permit judicial review of the Board's certification of the election results in the instant representation case.

REASON FOR GRANTING THE WRIT

The Board, and the Eleventh Circuit by enforcing the Board's Order, failed to apply existing case precedent established by the Supreme Court in *NLRB v. Savair Mfg. Co.*, 414 U.S. at 270, 94 S. Ct. at 495, by finding that the certificates the Union offered to some, but not all, employees during the election were lawful. Because the Eleventh Circuit failed to reconcile the Board's decision with the plain language of *Savair*, requiring that offers to waive initiation fees be made to *all* employees, the Eleventh Circuit's decision is in direct conflict with the precedent of the Supreme Court. Therefore, this case is appropriate for review by the Supreme Court.

In *NLRB v. Savair Mfg. Co.*, 414 U.S. at 270, 94 S. Ct. at 495, the Supreme Court specifically held that a waiver of initiation fees must be offered to **all employees**, and must not be conditioned upon pre-election union support. *Id.* at 496 n.4. If an initiation fee waiver does not apply equally to **all** employees, then the waiver will provide a sufficient basis for setting aside the election. *Vicksburg Hospital, Inc.*

v. NLRB, 653 F.2d 1070 (5th Cir. 1981);[5] *NLRB v. VSA, Inc.*, 24 F.3d 588 (4th Cir. 1994) (*Savair* indicates in *dicta* that waivers of initiation fees must be offered "across-the-board").

Savair expressly requires an initiation fee waiver to be offered "to all new members" for the laboratory conditions for a fair and free election to be preserved. *Savair*, 414 U.S. at 270, 94 S. Ct. at 496 n.4. The failure to require an across-the-board waiver would permit unions to display a type of preferential treatment and favoritism that clearly violates the National Labor Relations Act. Therefore, to prevent the union from buying endorsements and painting a false portrait of employee support during an election, an initiation fee waiver must be offered to all employees. *See NLRB v. WFMT*, 997 F.2d 269 (7th Cir. 1993).

In *WFMT*, several employees of the union contributed $3,000 to $4,000 to an initiation fee fund to pay the union dues for those employees financially unable to afford the union's $300 initiation fee. The company argued that the establishment of this initiation fee fund warranted setting the election aside because it was an impermissible promise of a benefit that violated *Savair*. In finding the initiation fee fund to be a lawful offer to waive initiation fees, the Board relied on the fact that the fund was "available for *all* employees in the bargaining unit." *Id.* at 276 (emphasis in original). Because the fund was available to **all** employees, the Board found that the offer did not rise to the level of unjustly allowing the union to buy endorsements and paint

5. In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

a false portrait of employee support during its election campaign. *Id.*

In this case, unlike in *WFMT*, the offer to waive initiation fees was *not* offered to **all** employees. It is undisputed that **all** employees eligible to vote in the election did *not* receive certificates or vouchers from the Union. There were approximately 173 employees in the appropriate collective bargaining unit. Of these 173 employees, at least *nine* employees did not receive certificates. Inasmuch as the evidence is uncontraverted that at least nine employees, who were still employed by Parkwood and eligible to vote in the election (R3-304), were never presented with the certificates that purported to waive the initiation fees, all employees were not entitled to an initiation fee waiver pursuant to the certificate. (R3-225, 304). As a result, the UFCW failed to fulfill its legal obligation to convey its offer to waive initiation fees in an across-the-board fashion to all employees. Therefore, the waiver offer unjustly allowed the union to buy endorsements and paint a false portrait of employee support during its election campaign. *WFMT*, 997 F.2d 276.

The Union argues that it should not be penalized for failing to unconditionally offer the waiver to all employees because it mailed the waiver to employees at the addresses provided by Parkwood in its *Excelsior* list. There is no evidence in the record, however, to suggest that the addresses contained on the *Excelsior* list, which was prepared and submitted over one month prior to the date the Union mailed its certificates, were either incomplete or inaccurate. Furthermore, Parkwood was not required to insure 100% accuracy when it provided the names and

addresses of employees on the *Excelsior* list.[6] Therefore, it was at the Union's risk to mail the certificates to the employees' addresses as shown on the *Excelsior* list. Nor was there any evidence at trial that the addresses to which the certificates were sent even conformed to the addresses contained on the list. The Union should not be able to escape liability for failing to offer the certificates to *all* employees just because its decision to use the *Excelsior* list proved to be ineffective.

Notwithstanding that the Union clearly failed to comply with a substantial requirement of *Savair*, the Board held that the certificates were lawful offers to waive initiation fees. The Board's decision, enforced by the Eleventh Circuit, completely ignores the substance and effect of the Supreme Court's decision. The certificates in this case violated a specific requirement of *Savair*, impermissibly interfered in the election, and allowed the Union to buy endorsements and paint a false portrait of employees' sentiment. Therefore, the election in this case should have been set aside and a second election ordered.

By failing to set aside the election in this case and order a second election, the Eleventh Circuit Court of Appeals disregarded the Supreme Court's decision in *Savair*. Therefore, Petitioners respectfully request that this Court grant its petition for writ of certiorari and review the decision of the Eleventh Circuit Court of Appeals.

---

6. *See Kent Field Medical Hospital*, 219 NLRB 174 (1975) (the Board excused an employer a 7% error factor in submitting incorrect addresses and omitting names, finding that an error of such magnitude did not amount to "insubstantial compliance" with the *Excelsior* rule) and *Days Inns*, 216 NLRB 384 (1975) (the Board held a 13% error factor in the addresses of eligible voters was neither gross neglect nor an absence of good faith warranting a new election).

CONCLUSION

Accordingly, petitioners respectfully request that their petition for a writ of certiorari be granted.

Respectfully submitted,

CLIFFORD H. NELSON, JR.
Counsel of Record
FRANCINE N. SILVERSTEIN
WIMBERLY, LAWSON, STECKEL,
NELSON & SCHNEIDER, P.C.
Attorneys for Petitioners
Suite 400, Lenox Towers
3400 Peachtree Road, N.E.
Atlanta, Georgia 30326
(404) 365-0900

APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DATED AND FILED DECEMBER 1, 1998

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-8627
Non-Argument Calendar

NLRB No. 12-CA-19239

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

versus

PARKWOOD DEVELOPMENTAL CENTER INC., TEMPLETON SCHOOL OF SPECIAL EDUCATION, INC.,

Respondents,

UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 1996,

Intervenor.

Application for Enforcement of an Order of the National Labor Relations Board

(December 1, 1998)

Appendix A

Before BIRCH, DUBINA and BARKETT, Circuit Judges.

PER CURIAM:

This case is before us on the application of the National Labor Relations Board (the "Board") to enforce an order of the Board against Parkwood Developmental Center and Templeton School of Special Education, Inc. (the "Respondents").

The issue presented is whether the Board reasonably exercised its discretion in overruling the Respondents' election objections, and therefore properly found that the Respondents violated § 8(a)(5)(1) of the National Labor Relations Act by refusing to bargain with the Union as the duly certified representative of a unit of the Respondents' employees.

The Respondents first contend that the Board's agent in charge of the election failed to fully and completely seal the ballot box used in the election and that these circumstances put in question the integrity of the election, necessitating a new election. A Board conducted election, however, is presumed fair and regular. *See NLRB v. IDAB, Inc.*, (11th Cir. 1985). In addition,

> [t]he Board has a wide degree of discretion in conducting elections and resolving representation matters. *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330-31, 67 S.Ct. 324, 327, 91 L.Ed. 322 (1946); *NLRB v. Osborne Transportation, Inc.*, 589 F.2d 1275, 1279 (5th

> Cir. 1979). In a challenge to a Board decision in this area, the burden is on the objecting party to prove by specific evidence that the election results did not accurately reflect the unimpeded choice of the employees. *NLRB v. White Knight Mfg.*, 474 F.2d 1064, 1067 (5th Cir. 1973); *NLRB v. Golden Age Beverage Co.*, 415 F.2d 26, 29 (5th Cir. 1969).

Daylight Grocery Co. v. NLRB, 678 F.2d 905, 909 (11th Cir. 1982). We review Board decisions in this area under the substantial evidence standard. *See NLRB v. Dixie Lime & Stone Co.*, 737 F.2d 1556, 1559 (11th Cir. 1984), (quoting *TRW-United Greenfield Division v. NLRB*, 716 F.2d 1391, 1393 (11th Cir. 1983)).

After carefully reviewing the record, we conclude that substantial evidence supports the Board's decisions to overrule Respondents' election objections and certify the Union as the bargaining representative for its workers. We also conclude that the Respondents' argument that the Union impermissibly waived initiation fees and dues in violation of the standards adopted in *NLRB v. Savair Manufacturing. Co.*, 414 U.S. 270 (1973), is meritless. Accordingly, we grant the Board's petition for enforcement of its order against the Respondents.

PETITION ENFORCED.

APPENDIX B — DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD DATED AND FILED MARCH 30, 1998

* * *

March 30, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND BRAME

Pursuant to a charge filed on January 12, 1998, the General Counsel of the National Labor Relations Board issued a complaint on January 26, 1998, alleging that the Respondents have violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 12-RC-8055. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondents filed an answer admitting in part and denying in part the allegations in the complaint.

On February 23, 1998, the General Counsel filed a Motion for Summary Judgment. On February 27, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Appendix B

Ruling on Motion for Summary Judgment

In its answer the Respondents admit their refusal to bargain, but attacks the validity of the certification on the basis of their objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondents do not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor do they allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondents have not raised any representation issue that is properly litigable in this unfair labor practice proceeding. *See Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondents, Georgia corporations, with an office and place of business in Valdosta, Georgia, have been engaged in the business of operating an intermediate care facility for the mentally retarded and a special education institute. At all material times, Respondent Parkwood Developmental Center, Inc.

and Templeton School of Special Education, Inc., have been joint employers of the employees in the unit described below. During the 12-month period preceding issuance of the complaint, the Respondents, in conducting their business operations, derived gross revenues in excess of $100,000 and purchased and received at their Valdosta, Georgia facility goods and materials valued in excess of $5000 directly from points located outside the State of Georgia. We find that the Respondents are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. *The Certification*

Following the election held April 10, 1997, the union was certified on November 7, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time employees of the Respondents including custodians, housekeeping aides, unit housekeepers, laundry employees, maintenance employees, car/bus drivers, horticulturists, cooks, assistant cooks, dietary aides, dietary AM/PM janitors, social work technicians, direct care staff employees, direct care team leaders, medication nurses, treatment nurses, infection control nurses, physical health records nurses, transportation and

appointment specialists, behavior program aides, activities center staff, behavior program aide/data specialists, transportation aides, sensorimotor therapists, and teacher aides, but not including receptionist, secretary to the administrator, purchasing coordinator, accounting /bookkeeper, clerical assistant for Templeton School, QMR records auditor, clinical records staff, computer data and program specialist, computer specialist and assistant to Personnel Director, professional employees, managerial employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since November 24, 1997, the Union has requested the Respondents to bargain, and, since that date, the Respondents have refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after November 24, 1997, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Appendix B

REMEDY

Having found that the Respondents have violated Section 8(a)(5) and (1) of the Act, we shall order them to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondents begin to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 N.L.R.B. 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied, 379 U.S. 817 (1964); *Barnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondents, Parkwood Development Center, Inc. and Templeton School of Special Education, Inc., Valdosta, Georgia, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Food and Commercial Workers Union Local 1996, AFL-CIO, CLC as the exclusive bargaining representative of the employees in the bargaining unit.

Appendix B

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time employees of the Respondents including custodians, housekeeping aides, unit housekeepers, laundry employees, maintenance employees, car/bus drivers, horticulturists, cooks, assistant cooks, dietary aides, dietary AM/PM janitors, social work technicians, direct care staff employees, direct care team leaders, medication nurses, treatment nurses, infection control nurses, physical health records nurses, transportation and appointment specialists, behavior program aides, activities center staff, behavior program aide/data specialists, transportation aides, sensorimotor therapists, and teacher aides, but not including receptionist, secretary to the administrator, purchasing coordinator, accounting/bookkeeper, clerical assistant for Templeton School, QMR records auditor, clinical records staff, computer data and program

specialist, computer specialist and assistant to Personnel Director, professional employees, managerial employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Valdosta, Georgia, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 12 after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since November 24, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

---

1. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Appendix B

Dated, Washington, D.C. March 30, 1998

William B. Gould IV, Chairman

Sarah M. Fox, Member

J. Robert Brame III, Member

Appendix B

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER
OF THE NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Food and Commercial Workers Union Local 1996, AFL-CIO, CLC as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time employees of Parkwood Developmental Center, Inc. and Templeton School of Special Education, Inc. including custodians, housekeeping aides, unit housekeepers, laundry employees, maintenance employees, car/bus drivers, horticulturists,

cooks, assistant cooks, dietary aides, dietary AM/PM janitors, social work technicians, direct care staff employees, direct care team leaders, medication nurses, treatment nurses, infection control nurses, physical health records nurses, transportation and appointment specialists, behavior program aides, activities center staff, behavior program aide/data specialists, transportation aides, sensorimotor therapists, and teacher aides, but not including receptionist, secretary to the administrator, purchasing coordinator, accounting/bookkeeper, clerical assistant for Templeton School, QMR records auditor, clinical records staff, computer data and program specialist, computer specialist and assistant to Personnel Director, professional employees, managerial employees, guards and supervisors as defined in the Act.

PARKWOOD DEVELOPMENTAL CENTER, INC. AND TEMPLETON SCHOOL OF SPECIAL EDUCATION, INC.

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DENYING PETITION FOR REHEARING DATED AND FILED FEBRUARY 4, 1999

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 98-8627

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

versus

PARKWOOD DEVELOPMENTAL CENTER INC., TEMPLETON SCHOOL OF SPECIAL EDUCATION, INC.,

Respondents,

UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 1996,

Intervenor.

Application for Enforcement of an Order of the National Labor Relations Board

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC
(Opinion _____, 11th Cir., 19__, __ F.2d __

Appendix C

Before: BIRCH, DUBINA, and BARKETT, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

s/ Joel F. Dubina
UNITED STATES CIRCUIT JUDGE